



General Assembly

Amendment

February Session, 2006

LCO No. **4089**

HB0580104089SR0

Offered by:

SEN. DELUCA, 32nd Dist.

SEN. MCKINNEY, 28th Dist.

SEN. FREEDMAN, 26th Dist.

To: House Bill No. **5801**

File No. 224

Cal. No. 323

"AN ACT CONCERNING TRUTH IN MUSIC ADVERTISING."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective October 1, 2006*) As used in sections 501 to
4 508, inclusive, of this act, "right of publicity" means the property right
5 of an individual provided in section 502 of this act; and "name" means
6 the actual or assumed name of a living or deceased individual that is
7 intended or used to identify the individual.

8 Sec. 502. (NEW) (*Effective October 1, 2006*) Every individual has a
9 property right in the use of his or her name, voice, signature,
10 photograph, image, likeness, distinctive appearance, gestures or
11 mannerisms and such right shall be freely transferable, assignable and
12 licensable, in whole or in part, by any otherwise permissible form of
13 inter vivos or testamentary transfer including, without limitation, a
14 will, trust, contract or cotenancy with survivorship provisions or

15 payable on death provisions or, if none is applicable, under the laws of
16 intestate succession applicable to interests in personal property. The
17 right does not expire upon the death of the individual. The right exists
18 whether or not it was commercially exploited during the individual's
19 lifetime.

20 Sec. 503. (NEW) (*Effective October 1, 2006*) A person may not use an
21 aspect of an individual's right of publicity for a commercial purpose
22 including the advertising of products or services or for the purposes of
23 fund raising or the solicitation of donations during the individual's
24 lifetime or for seventy years after the date of the individual's death
25 without having obtained the prior written consent of the individual or
26 a person, heir, executor, trustee or other fiduciary or entity with proper
27 authority to give such consent. A failure to obtain such prior consent
28 shall be an infringement of the individual's right of publicity. An
29 infringement may occur under this section without regard to whether
30 the use or activity is for profit or not for profit.

31 Sec. 504. (NEW) (*Effective October 1, 2006*) (a) The following persons
32 may bring a civil action to enforce the rights set forth in sections 501 to
33 508, inclusive, of this act:

34 (1) A person or persons, including an individual whose right of
35 publicity is at issue, who individually or collectively own all of an
36 individual's right of publicity, subject to any licenses regarding that
37 right of publicity;

38 (2) A person, including a licensee of an individual's right of
39 publicity, who is expressly authorized, in writing, by an owner or
40 owners of an individual's right of publicity to bring a civil action;

41 (3) Except as otherwise provided by an agreement transferring an
42 aspect of an individual's right of publicity and subject to subsection (c)
43 of this section, a person to whom ownership or any portion of
44 ownership of an individual's right of publicity has been transferred.

45 (b) Before bringing a civil action under this section, a person who

owns less than all of an individual's right of publicity shall notify the individual whose right of publicity is the subject of the proposed civil action, if living, by regular mail addressed to the last-known address of the individual. The person shall also notify any person to whom the individual's right of publicity has been transferred by any means of the proposed civil action by the following means:

(1) Regular mail addressed to the last-known address of each transferee; or

(2) If the address of the transferee is not known, publication in a newspaper of general circulation in the municipality in which the individual who is the subject of the proposed civil action resides or, in the case of a deceased individual, in the municipality or probate district in which the individual's estate has been or would have been admitted to probate.

(c) The individual whose right of publicity is the subject of the proposed civil action brought under this section, and any person to whom ownership of that right has been transferred, may object to the proposed civil action not later than twenty days after the date of the mailing of the notice specified in subdivision (1) of subsection (b) of this section or sixty days after the date of publication of the notice specified in subdivision (2) of subsection (b) of this section by giving written notice of the objection to the person proposing to bring the civil action. If the individual or transferee does not object to the civil action within the time period specified in this subsection, the individual or transferee is forever barred from objecting to such action. A person may not bring a civil action under this section if a person or persons, including the individual whose right of publicity is the subject of the proposed civil action, who collectively own more than fifty per cent of the individual's right of publicity object to the proposed civil action.

(d) A person, other than a licensee of an individual's right of publicity, who owns less than all of an individual's right of publicity

78 and brings a civil action under this section shall account to any other
79 persons owning an interest in that right of publicity to the extent of the
80 other person's interest with respect to any net recovery in the civil
81 action less the person's costs of collection and a reasonable attorney's
82 fee.

83 Sec. 505. (NEW) (*Effective October 1, 2006*) (a) The superior court may
84 grant temporary restraining orders, preliminary injunctions and
85 permanent injunctions as may be appropriate pursuant to chapter 916
86 of the general statutes to prevent or restrain the unauthorized use of
87 the rights in a living or deceased individual's name, voice, signature,
88 photograph, image, likeness, distinctive appearance, gestures or
89 mannerisms.

90 (b) Any person who infringes the rights set forth in sections 501 to
91 508, inclusive, of this act shall be liable for the greater of two thousand
92 dollars or the actual damages sustained as a result of the infringement,
93 and any profits that are attributable to the infringement and not taken
94 into account when calculating actual damages. To prove profits under
95 this subsection, the injured party or parties shall submit proof of gross
96 revenues attributable to the infringement, and the infringing party
97 shall be required to prove such party's properly deductible expenses.
98 For the purposes of computing statutory damages, use of a name,
99 voice, signature, photograph, image, likeness, distinctive appearance,
100 gestures or mannerisms related to one work constitutes a single act of
101 infringement regardless of the number of copies made or the number
102 of times the name, voice, signature, photograph, image, likeness,
103 distinctive appearance, gestures or mannerisms are displayed.

104 (c) At any time while an action under sections 501 to 508, inclusive,
105 of this act is pending, the court may order the impounding of all
106 materials or any part thereof claimed to have been made or used in
107 violation of the injured party's rights, and the court may enjoin the use
108 of all plates, molds, matrices, masters, tapes, films, film negatives or
109 other articles by means of which such materials may be reproduced.

110 (d) As part of a final judgment or decree, the court may order the
111 destruction or other reasonable disposition of all materials found to
112 have been made or used in violation of the injured party's rights, and
113 of all plates, molds, matrices, masters, tapes, films, film negatives or
114 other articles by means of which such materials may be reproduced.

115 (e) A court may allow the prevailing party to recover court costs, a
116 reasonable attorney's fee and other expenses of litigation incurred in
117 recovering any remedy or defending any action brought under this
118 section.

119 Sec. 506. (NEW) (*Effective October 1, 2006*) The provisions of sections
120 501 to 508, inclusive, of this act do not apply to:

121 (1) The use of an individual's name, voice, signature, photograph,
122 image, likeness, distinctive appearance, gestures or mannerisms in any
123 of the following:

124 (A) News or public affairs reporting and programs;

125 (B) The broadcast or reporting of an event or topic of general or
126 public interest;

127 (C) Single, original works of fine art;

128 (D) Literary works;

129 (E) Theatrical works, musical compositions, film and radio and
130 television programs, except when the individual's name, voice,
131 signature, photograph, image, likeness, distinctive appearance,
132 gestures or mannerisms are used electronically or digitally to create a
133 performance to which the individual did not consent; or

134 (F) Promotional material or an advertisement for a news reporting
135 or entertainment medium for work that is exempt pursuant to this
136 section and that (i) uses all or part of a past edition of the medium's
137 own broadcast or production, and (ii) does not convey or reasonably
138 suggest that an individual endorses the news reporting or

139 entertainment medium; and

140 (2) The use of an individual's name to truthfully identify the
141 individual as the author of a written work or the performer of a
142 recorded performance, under circumstances in which the written work
143 or recorded performance is otherwise rightfully reproduced, exhibited
144 or broadcast.

145 Sec. 507. (NEW) (*Effective October 1, 2006*) The provisions of sections
146 501 to 508, inclusive, of this act apply to an act that occurs in this state
147 regardless of the domicile, residence or citizenship of the individual
148 whose right of publicity is at issue and to an act enumerated in section
149 52-59b of the general statutes.

150 Sec. 508. (NEW) (*Effective October 1, 2006*) The rights and remedies
151 provided by sections 501 to 508, inclusive, of this act are cumulative
152 and shall be in addition to any other rights and remedies available at
153 law, or in equity, to any person."